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MAR 10 1995

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: CC Docket No. 92-256; The GTE Telephone Operating Companies and the GTE System Telephone Companies; Petition for Waiver of the Commission's GTE ONA Order Requirement to File Intrastate ONA Tariffs Concurrently with the Federal ONA Tariff Filings

Written Ex Parte Presentation of the State of Hawaii

Dear Mr. Caton:

On behalf of the State of Hawaii's Department of Commerce and Consumer Affairs (the "State"), we hereby submit this written ex parte presentation in response to GTE's above-referenced waiver request and its ex parte filing of March 6, 1995.¹ The State urges the Commission to deny the waiver with regard to GTE Hawaiian Telephone Company because GTE's asserted justification for the waiver does not hold true in Hawaii, and because a delay in the filing of ONA tariffs in Hawaii will adversely impact the State's own investigation of infrastructure issues.

¹ See Letter of Edwin J. Shimizu to Laurel Bergold and Rose Crellin (filed March 6, 1995). GTE's Waiver Request appeared on Public Notice on January 17, 1995 (DA 95-48).

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BACKGROUND

According to the GTE ONA Order,² GTE is required to file federal and state ONA tariffs by 12 months after the release of the Order, or by April 4, 1995. GTE must implement ONA requirements and nondiscrimination safeguards within 15 months from the release of the Order.³ The Order does not say as much, but it is apparent that the three-month window between tariff filing and implementation is intended to afford the FCC and the states an opportunity to preview the specifics of GTE's ONA efforts.

Months after the Commission's order, GTE now requests a waiver of the requirement to file federal and state tariffs simultaneously, and specifically it asks that state tariffs not be filed until thirty days after the effective date of its federal ONA tariffs. GTE contends that the waiver will not delay implementation of ONA requirements or nondiscrimination safeguards.⁴ As justification for the request, GTE cites the number of tariffs it must file absent a waiver and their interrelated nature, suggesting serious practical burdens in meeting the concurrent filing requirement. In addition, GTE claims that states likely will not act on GTE's tariffs until after federal action and that states actually might prefer or require tariff filings after federal approval.

DISCUSSION

A. The State of Hawaii Desires to Perform its Review of GTE's Tariff Simultaneously with the Federal Review

The State of Hawaii has been an active participant in this proceeding since its inception, strongly urging the Commission to bring the benefits of ONA requirements to the people of the State. Notwithstanding GTE's claims, the State of Hawaii now desires that GTE Hawaiian Telephone Company submit its ONA tariffs in accordance with the GTE ONA Order.

² Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, Report and Order, 9 FCC Rcd 4922 (1994) (the "GTE ONA Order").

³ *Id.* at 4954.

⁴ GTE Ex Parte of March 6, 1995.

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Review of GTE's tariffs, according to the Commission's initial schedule, will allow the State to more actively participate (if need be) in the development of the ONA tariff than if filing is delayed. Filing the federal and state tariffs at the same time will provide a more complete record of exactly what GTE (Hawaii) intends for implementation of the ONA Plan. This should prove of value to both federal and state efforts. The State understands this to be the Commission's original intention in adopting the concurrent filing requirement. The State desires to take full advantage of it.

GTE's allusion to the burden of the concurrent filing requirement should not be heard. GTE has known since April of 1994 that this requirement stood before it. It did not petition the Commission to reconsider the requirement. It should not now be allowed to circumvent the requirement on the eve of its effective date.

**B GTE's Tariff will Assist the State in its Ongoing
Infrastructure Investigation**

There is an additional reason why a waiver would be particularly inappropriate as far as Hawaii is concerned. The State Public Utilities Commission ("PUC") is in the midst on a far-reaching examination of telecommunications investment and infrastructure issues. In phase I of the investigation, the PUC is examining such issues as encouraging competition, ensuring consumer protection, encouraging technological innovation, unbundling of telecommunications products and services, and developing pricing flexibility for GTE Hawaiian Telephone Company.

In an order released February 15, 1995, the PUC restated its desire to finish phase I in 1995, and towards that end, it announced a very tight hearing schedule, with final pre-hearing submissions to be made by April 21, 1995 and a hearing commencing May 22, 1995.⁵ The State believes that GTE's ONA tariffs should be available at the date originally stipulated by the Commission so that this information can be available for this proceeding.⁶

⁵ Proceeding on Communications, Including an Investigation of the Communications Infrastructure of the State of Hawaii, Docket No. 7702, Prehearing Order No. 13771 (filed February 15, 1995).

⁶ GTE also seeks a delay in the federal filing deadline. See Public Notice, March 9, 1995 (DA 95-454). Hawaii may comment on that request later. Any such delay, however, will further prejudice the State's interest.

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For the foregoing reasons, the State of Hawaii respectfully requests that the Commission deny GTE's waiver request as it pertains to GTE Hawaiian Telephone Company.

Sincerely,

STATE OF HAWAII
DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

A handwritten signature in black ink, appearing to read "Marc Berejka", with a long horizontal flourish extending to the right.

Herbert E. Marks
Marc Berejka

Its Attorneys

cc: Laurel Bergold, Esq. (by hand)
Rose Crellin, Esq. (by hand)
Gail L. Polivy, Esq.